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ABSTRACT

Major court decisions concerning the least restrictive environment for students with severe disabilities are analyzed and conclusions are drawn outlining the current status of case law. Court cases have weighed the benefits of mainstreaming against the benefits of providing greater or more specialized services in a segregated program. In general, the courts have held that it is appropriate to sacrifice a degree of academic quality for the sake of socialization and that mainstreaming is not required for all students with disabilities but must be provided, where appropriate, to the maximum extent feasible. School districts are required to use supplementary aids and services to facilitate mainstreaming but are not required to always provide mainstreaming in the student's home school. The article suggests that if school systems do not speed up their restructuring to provide students with an appropriate education in the least restrictive environment, they are likely to be required to do so by court orders. (Contains 23 references.) (DB)

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MAINSTREAMING STUDENTS WITH SEVERE DISABILITIES:

IMPLICATIONS FOR PUBLIC POLICY

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Abstract

The Individuals with Disabilities Education Act (formerly the Education for All Handicapped Children Act) states that students with disabilities are to be provided a free appropriate public education in the least restrictive environment. As with all decisions made pursuant to that Act, mainstreaming decisions are highly individualized and must take the student's unique needs into consideration. School officials must frequently balance the benefits of mainstreaming against any loss of educational quality that may result from removing the student from a specialized, albeit segregated, educational environment.

Major court decisions concerning the least restrictive environment mandate are analyzed in this article and conclusions are drawn outlining the current status of case law. The authors contend, however, that the time has passed for school districts to restructure general and special education programs so that students with severe disabilities can receive an appropriate education in less restrictive environments than are currently available.

MAINSTREAMING STUDENTS WITH SEVERE DISABILITIES: IMPLICATIONS FOR PUBLIC POLICY

The Individuals with Disabilities Education Act (IDEA) mandates that students with disabilities are to be educated in the least restrictive environment (LRE). The Act is very explicit in stating that this provision applies across the continuum of placement alternatives. Specifically the Act requires states to establish procedures assuring that students with disabilities are educated to the maximum extent appropriate with students who do not have disabilities. Furthermore, the use of special classes and separate facilities or other removal from the general education environment is to occur only when the nature or severity of the student's disability is such that instruction in general education classes cannot be achieved satisfactorily even with supplementary aids and services. These provisions apply to students in private schools, institutions, or other care facilities as well as to students in public schools and facilities (IDEA, § 1412(5)(B)). This provision of the law has been cited frequently by courts in decisions concerning the provision of a free appropriate public education (FAPE) for students with disabilities.

In determining the extent to which a student with severe disabilities should be integrated into the general eduction environment, courts have weighed the benefits of mainstreaming against the benefits of providing greater or

more specialized services in a segregated program (Bonadonna v. Cooperman, 1985). Often, courts indicated that the LRE mandate was secondary to the provision of an appropriate instructional program (Johnston v. Ann Arbor Public Schools, 1983). Placement decisions are highly individualized and it is difficult to provide general guidelines concerning an appropriate level of mainstreaming. However, several recent federal and state appellate court decisions provide special educators with greater direction for mainstreaming students with severe disabilities.

Background

A comprehensive body of case law has developed since the IDEA was enacted in 1975. Many of the court opinions have directly addressed the LRE mandate as questions often arise concerning the degree to which a given student with disabilities should be mainstreamed. Since the IDEA states that students should be removed from the general education environment only to the extent necessary to provide needed special education services, the courts must determine if the services to be provided warrant removal from the general classroom, or if they could be provided in a less restrictive setting with supplementary aids or services.

The courts have held that the LRE requirement cannot be used to preclude a placement in a segregated setting if such a setting is required to provide an appropriate program (Matthews v. Campbell, 1979; Board of Education of East Windsor v. Diamond, 1986; St. Louis Developmental

Disabilities Center v. Mallory, 1984). Similarly, placements in more restrictive environments have been approved by the courts after it has been shown that a satisfactory education cannot be provided in a less restrictive setting even with supplementary aids and services (Johnston v. Ann Arbor Public Schools, 1983; Wilson v. Marana Unified School District, 1984; Lachman v. Illinois State Board of Education, 1988).

In striking the balance between mainstreaming and the provision of needed educational services the courts have held that it is appropriate to sacrifice a degree of academic quality for the sake of socialization. However, the courts have approved such a trade-off only when it could be shown clearly that the student would benefit from the social aspects of mainstreaming (Roncker v. Walter, 1983; Bonadonna v. Cooperman, 1985).

In general the courts have ruled that mainstreaming is not required for all students with disabilities but must be provided, where appropriate, to the maximum extent feasible. Students should not be mainstreamed solely for the sake of mainstreaming; rather, mainstreaming should occur when there is some benefit to be derived from it. In fact, one court has stated that mainstreaming should not be provided in a situation where the mainstream program would not teach the student the skills that are necessary to adequately become integrated in the mainstream of life. Interestingly, the court felt that a segregated program would provide the

student with those skills (Visco v. School District of Pittsburg, 1988).

Recent Decisions

In several recent opinions the courts have provided special education practitioners with additional guidance on mainstreaming students with severe disabilities. In an opinion that provides considerable guidance the Fifth Circuit Court of Appeals in Daniel R.R. v. State Board of Education (1989) held that a substantially separate class was appropriate for a student with Down syndrome who had been classified as mentally retarded. The student previously had been enrolled in a general education classroom for part of the school day; however, the court found that this arrangement was not successful because the student did not participate in class activities and failed to master the skills he was exposed to. The court was further persuaded by testimony that indicated that the curriculum would have to be modified drastically to meet the student's instructional needs and that his needs required so much of the teacher's time that too much attention was diverted from the rest of the class.

The court determined that students with severe disabilities may be removed from the general education environment when they cannot be satisfactorily educated in that setting. In holding that the school district's proposal for a substantially separate class placement did not violate the IDEA's LRE mandate, the appeals court

provided lower courts with some instructions for determining when a school district has met its obligation to mainstream students with severe disabilities. Borrowing language from the IDEA the court held that courts should first determine whether education in the regular classroom, with supplementary aids and services, can be achieved satisfactorily. If it cannot, and special education must be provided, the lower courts should determine whether the school district has mainstreamed the student to the maximum extent appropriate. In determining the answers to this two part test, lower courts were instructed to consider the student's ability to grasp the regular education curriculum, the nature and severity of the disability, the effect the student's presence would have on the functioning of the general education classroom, the student's overall experience in the mainstream, and the amount of exposure the special education student would have to nondisabled students.

The Second Circuit Court of Appeals in Briggs v. Board of Education of Connecticut (1989) also held that mainstreaming is inappropriate where the nature or severity of the student's disability is such that education in a typical classroom cannot be achieved satisfactorily. This case involved a dispute over the proper placement for a hearing impaired pre-school student. The school district proposed a public pre-school program for hearing impaired children taught by a certified teacher of the hearing

impaired. The parents preferred a private pre-school program attended mostly by nondisabled students that was not taught by a certified teacher of the hearing impaired. The district court had approved the parents' choice holding that the program offered by the school district could be provided in a less restrictive setting and that any loss of effectiveness of services being provided in a segregated setting was outweighed by the benefits of mainstreaming. The appeals court reversed, criticizing the lower court for substituting its judgment for that of school district experts who had determined that the segregated program was best for the student. The appeals court found no evidence that would substantiate the claim that the student's needs could be met in a mainstreamed environment.

In DeVries v. Fairfax County School Board (1989) the mother of an autistic student contested the school district's proposal to place the student in a county vocational center. She preferred a public high school placement claiming that it was appropriate and the least restrictive environment. The district court found that the proposed vocational program was appropriate and the appeals court agreed, concluding that the student could not be satisfactorily educated in a general education environment even with supplementary aids and services. In reaching this decision the court found that the student had depressed cognitive functioning, exhibited immature behavior, had difficulty with interpersonal communication and relationships, and required a predictable environment.

The court approved a school district's placement of a student who was classified as educable mentally retarded and socially and emotionally disturbed in a class located in a segregated special education center over a less restrictive placement in Liscio v. Woodland Hills School District (1989 & 1990). The student had been placed in the less restrictive program on a part-time interim basis. Testimony indicated that he had made little academic progress in that program, was often disruptive, interfered with the operation of the class, and did not interact socially with the other students. However, the court ordered some mainstreaming in a public school setting.

The Sixth Circuit Court of Appeals reversed a lower court's decision that the school district's proposed individualized educational program (IEP) for a learning disabled student was inappropriate in Gillette v. Fairland Board of Education (1991). The school district's IEP called for placement in a learning disabilities class with some mainstreaming. His parents preferred placement in a general education class with assistance from a learning disabilities specialist. Ironically, when the dispute arose the parents removed the student from the public school program and enrolled him in a private school. The district court approved their action due to the school district's failure to provide sufficient mainstreaming. On appeal the Sixth Circuit Court reversed, finding that the student had more of an opportunity to interact with nondisabled students in the

public school than in the private school and that he could not be fully mainstreamed without detriment to his own education and that of his classmates.

In Chris D. v. Montgomery County Board of Education (1990) the court consolidated two cases involving mainstreaming issues. In the first decision the court ordered a residential placement for a student who had exhibited aggressive and assaultive behavior in a public school program. The court ruled that the evidence was clear that the student could not function academically in a school setting until his behavior was controlled. The school district had proposed homebound instruction or instruction in an isolated room located in an administration building. However, the court held that a residential facility was less restrictive since it provided the student contact with other children and would better facilitate his return to the classroom environment.

In the second decision the court also held that a school district's proposed IEP was inappropriate since it did not offer him a realistic prospect of returning to the general education environment. The court stated that supplementary aids and services must be used to allow a special education student to attend classes with nondisabled peers instead of being segregated in a special education class.

Although school districts are required to use supplementary aids and services to facilitate mainstreaming

they are not required to always provide that mainstreaming in the student's home school. A centralized program for a hearing impaired high school student was approved by the court in Barnett v. Fairfax County School Board (1991). The high school the student was required to attend was located several miles from the student's home. The parents objected and requested that a similar program be provided in the student's home school. The court noted that the student was earning satisfactory grades, was participating in extracurricular activities and was successfully mainstreamed. In view of the limited resources available to school districts, the court felt that a centralized program would better serve the interests of all students.

In the decisions discussed above the courts have ordered mainstreaming when it was felt that an appropriate educational program could be provided in a less restrictive environment or when the court felt the benefits to be gained from mainstreaming outweighed any loss of services that would result from movement to the less restrictive environment. In these cases the judiciary has been required to balance the equities to determine what would be in the student's best interests. However, in some cases judges have tipped the scales of justice in favor of the LRE mandate to the extent that the resultant program may, in fact, not be in the student's best interests.

The Idaho Supreme Court approved placement in a general education classroom in a parochial school over a special

education classroom in the public schools for a multihandicapped student with an assessed I.Q. of 37. The parochial school was willing to accept the student as long as an aide was provided; however, the school district refused to pay for the aide and offered the special education class placement. In a split decision, the court held that by accepting federal funds the school district was required to accept mainstreaming to the maximum extent appropriate and by arguing that its segregated program was appropriate the school district ignored Congressional intent that mainstreaming was preferable to a segregated setting, no matter how appropriate that setting might be (Thornock v. Boise Independent School District, 1988).

In a disturbing case a federal district court allowed a nine year old student with Down syndrome to remain in a kindergarten class for three years rather than place her in a substantially separate special education class as the school district had recommended. In Greer v. Rome City School District (1990) the court found that the student had made some progress in the kindergarten class with supplementary aids and services, particularly speech and language therapy, and was not disruptive. Although she was far from ready for first grade the court felt she could be adequately educated in the kindergarten classroom. Stressing that its decision may not be applicable in the future, in a footnote the court stated: "The Court's decision is based on the evidence and law as it existed at

the time of trial. What the court orders done this day may not be in the best interest of [the student] -- that however is not the issue" (p. 947 fn. 10).

Summary and Conclusions

Congress enacted the IDEA to provide students who have disabilities with access to the public schools and to provide them with an equal educational opportunity (Osborne, 1988). The LRE mandate was specifically included in that legislation to end the practice of segregating special education students by either educating them in special facilities or relegating them to classes in remote areas of the school building. The LRE provision has not only helped many students with severe disabilities access an educational program but has also allowed many to be mainstreamed into general education classes.

The court cases discussed above clearly indicate that school districts must balance the equities between providing appropriate educational services and an appropriate level of mainstreaming. While it is important to provide students who have disabilities with as many opportunities as possible to interact with their peers, school authorities must take care not to do so at the expense of a quality education. While some mainstreaming may be beneficial it is not necessarily true that more mainstreaming would be better. The line may be crossed whereby the student receives so much mainstreaming and so little specialized instruction that the total education program is rendered inappropriate.

School districts and courts must realize that the critical issue in special education placement decisions is the provision of a free appropriate public education. Mainstreaming is one of several components of an appropriate education and it should not be elevated to the status of being the primary consideration in a placement decision. The courts in several of the cases outlined above have taken a cautious approach in decisions involving mainstreaming students with severe disabilities. In most of these cases the jurists have been persuaded by the expert testimony of school authorities. Judges generally are reluctant to substitute their views of proper educational methodology for that of professional educators. This has been especially true in the mainstreaming cases where the courts have exercised considerable judicial restraint.

Implications for Public Policy

The language of the IDEA suggests that Congress envisioned an educational system whereby all students, regardless of the severity of their disabilities, would be educated in an environment as close as possible to what is considered to be normal. It may be inferred that Congress intended that the IDEA would spurn an overall restructuring of school systems so that students with disabilities would be educated within the general education structure. Although this has occurred to a large extent for students with mild to moderate disabilities, it has not become reality for students with severe disabilities. The courts,

exercising traditional judicial restraint on questions regarding educational methodology, generally have not ordered extensive mainstreaming of students with severe disabilities. However, as the above analysis indicates, there are isolated cases where the courts have mandated placements in less restrictive environments than school districts proposed.

The ultimate goal of special education is to help students become productive citizens. Regardless of their level of skill attainment, individuals with disabilities cannot be productive citizens if they are unable to function within the work force. Mainstreaming helps students develop the interpersonal skills necessary to function effectively in the work place. Mainstreaming also helps prepare other individuals to accept those with disabilities in society.

In the decade and a half since the IDEA was enacted philosophy, theory, and technology in general and special education have changed. As schools are reformed and restructured students with disabilities should have greater opportunities for appropriate mainstreaming. Today, most school administrators recognize and accept the schools' responsibility to educate all students, even those who may not fit neatly into existing programs. When service delivery systems are redesigned, school officials must do so with consideration for the student with severe disabilities. Although the courts have been reluctant to question school officials' decisions concerning mainstreaming, there are

some indications that traditional judicial restraint in this respect is eroding.

A careful analysis of the issues litigated in the LRE court cases indicates that decisions concerning mainstreaming are extremely complex. The conditions that exist require school districts, parents, and other concerned citizens to search for ways that strike a balance between what is simultaneously appropriate and least restrictive. In order for progress to be made in this area it needs to be generally accepted that the services required by students with severe disabilities should be defined by a set of operational variables that can be activated as the need for specialized aides and supports are identified. These variables include the major human and material resources that students with severe disabilities require to access the educational opportunities that Congress envisioned. These variables represent an essential spectrum of community based services that are organized to serve major medical, clinical, social, and family needs. As such a network of human services should be formed that is highly coordinated, cost effective, and carried out in such a manner as to clearly allow a meaningful role for consumers in making judgments and decisions on their own behalf.

The least restrictive placement should always be in a setting staffed by competent professionals who prepare the environment for the student to perform without unnecessary levels of anxiety that interfere with normal functioning.

An agenda of public policy initiatives that encourage the development of effective models of collaboration among various human service professionals and providers is needed. Such policy making would require human service agencies to enter into new interagency collaborative arrangements that would allow a strong role for providers and recipients of services to participate in decision making and in the implementation of service delivery.

Until now most LRE litigation has involved only a single student. Class action suits that would seek the development of appropriate programs within the mainstream for an entire group of students would appear to be more effective. The assumption that underlies case advocacy is the active presence of significant parents or guardians who will advocate for the needs of their children. When the large number of students in need of specialized services who simply do not have effective advocates is considered it is justifiable to view students with severe disabilities as a class in litigation seeking appropriate placement alternatives that are less restrictive than those currently available.

Successful litigation in this regard would require public policy decision-makers to consider the need to develop effective models of service collaboration that avoid the traditional bureaucratic policies that restrict access to services, and instead create an acceptable set of standards that all professionals are comfortable with.

Areas such as pre-service training, on-going professional development, service delivery model reform, monitoring, and quality control should be structured to insure that human and material resources follow individuals with disabilities into whatever setting is determined appropriate and least restrictive in terms of maximizing individual potential.

In 1975 Congress envisioned an educational system that would educate all students in an integrated setting. Unfortunately, a significant number of students with severe disabilities are still being educated in substantially segregated settings because that is the only way they can be provided with an appropriate education. Public policy initiatives are needed so that students who have severe developmental disabilities can be kept as close to normative settings as possible. Thus far the courts have been patient with school authorities and have given them much latitude in placement decisions. However, the era of judicial restraint in this respect may someday come to an end. A parallel can be drawn with the racial desegregation movement. In 1954 the U.S. Supreme Court ordered school districts to desegregate with all deliberate speed in Brown v. Board of Education of Topeka. Ten years later the high Court declared that the time for all deliberate speed had passed (Griffin v. County School Board, 1964; Vacca & Hudgins, 1991). The time for restructuring America's schools for the education of all students in the least restrictive environment has also passed. If school districts do not

take the initiative to restructure their educational programs so that the LRE mandate can be implemented as Congress envisioned, they may be forced to do so under court orders.

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